

## REMARKS

Claims 7, 21, 23 and 25 have been objected to due to informalities. The rejection is respectfully traversed. As the Examiner has indicated, the claims are drafted in independent form, and incorporate limitations of other claims. This form of claim drafting is allowed, as indicated in MPEP § 2173.05(f).

Claim 3 has been rejected under 35 USC 112, second paragraph. Claim 3 sufficiently has antecedent basis for the phrase “the step of further allocating.” Claim 1 recites the step of “further allocating” to which claim 3 refers.

Claims 1-25 have been rejected on the ground of non-statutory double patenting over claims 1-24 of US Pat. No. 6,987,741 for improperly extending the “right to exclude” an already granted patent; and Claims 1-25 have been rejected on the ground of non-statutory double patenting over claims 1-24 of US Pat. No. 6,650,869 for improperly extending the “right to exclude” an already granted patent. Applicant respectfully disagrees.

The Examiner cites *In re Schneller* as authority for these rejections. However, as noted in MPEP § 804 (section entitled “Another Type of Nonstatutory Double Patenting Rejections”, on page 800-26), this form of rejection “**will be rare**” and is only applicable under the strictest interpretation. Applicant’s kindly invite the Examiner to read the specific fact pattern associated with *In re Schneller*. It is clear that Applicant’s invention does not fall within the strict view of the *Schneller* case. Additionally, MPEP § 804 requires that the Examiner “first consult with his or her supervisory patent examiner (SPE). If the SPE agrees with the examiner then approval of the TC Director must be obtained before such a nonstatutory double patenting rejection can be made.” (emphasis added). It does not appear that the Examiner has either sought approval from his or her SPE, nor obtained the requisite approval from the TC Director. The rejections are therefore respectfully traversed.

Claims 1-23 have been rejected under 35 USC 103(a) as unpatentable over Rosati in view of Jones. The rejection is respectfully traversed.

The Examiner, on page 5 of the Office Action, states that “Rosati does not explicitly teach about a method wherein the anticipatory allocation is being determined according to loading of the network, as claims by applicant. However, in the same field of endeavor, Jones teaches about providing dynamic bandwidth on demand wherein the amount of bandwidth

provided [is] determined based on monitoring the bandwidth usage of all the clients connected to all switches that are attach[ed] to the network- hence monitoring the load in the network (see col. 5, lines 9-21).” The Examiner also states it would have been obvious to combine the references. Applicant respectfully disagrees.

Jones discloses a system and method to adjust dynamically network speed or bandwidth allocation. The connection is established at some initial speed, and bandwidth is monitored. When the connection speed becomes congested with data, the connection is dropped and a higher speed connection is established (see Abstract). The Examiner specifically cites col. 5, lns. 9-21 as disclosing additional capacity on the communication channel such that anticipatory allocation is determined according to loading of the data. However, a careful review of Jones reveals that there is no teaching or suggestion of allocating additional bandwidth (i.e. capacity) based on monitoring all clients. That is, Jones only discloses bandwidth management by monitoring usage between all clients. It does not teach or suggest further allocating additional capacity in anticipation of overload, as required by the claimed invention. The claimed invention specifically requires that “the anticipatory allocation is determined according to loading of the data network.”

Since the recited structure and method are not disclosed by the applied prior art, either alone or in combination, claims 1-23 are patentable.

Claims 22 and 23 have been rejected under 35 USC 103(a) as unpatentable over Rosati in view of Black and Williams. The rejection is respectfully traversed for the same reasons set forth in the arguments above, and since neither Black nor Williams disclose the anticipatory allocation is determined according to loading of the data network, as required by the claimed invention.

Claims 2, 9 and 15 would be allowable if rewritten in independent form to include any base and intervening claims.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

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